IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2566 OF 2007

Dy. Commissioner of Income Tax)..Petitioner
Central Circle-23 Mumbai.

Versus

Income Tax Appellate Tribunal& Anr.)..Respondents

Mr.B.M.Chatterji with Mr.R.Ashokan for petitioner.

Mr.A.K.Jasani for respondents.

Coram : F.I.Rebello &
R.S.Mohite,JJ

Date : 12.12.2007.

PC

1. The revenue has come against the order of the Tribunal dated 18.7.2007 whereby the cross objections filed by the respondents herein have been entertained. The revenue had preferred an appeal. The said appeal was found to be in order by the registry. The appeal was filed on 9.5.2003. Paragraph-4 of the order of the Tribunal shows the address as under :-

Late Harshad S.Mehta
1205/06, Maker Chamber V, Nariman Point,
Mumbai-400 021

The appeal memo is not on record. The learned Counsel for the respondents has shown to us across the bar the copy of the appeal memo in form no.36A wherein the respondent is described as under :-

Late H.S.Mehta
Mumbai.

2. The Tribunal thereafter recorded the finding of fact that the appeal memo was served on 13.6.2006. The cross-objections were filed on 19.6.2006.

3. It has further come on record that the address of the premises on which the deceased was sought to be served was sold by the Custodian on 14.5.2004 and the income tax authorities till the date of the order had not taken any steps to furnish the change in address of the assessee upto date. The order also records that there is nothing in the order-sheet that trip issued on 10.7.2004 was served as the service of memo of appeal on the assessee is not available on record. Under Section 253(4) of the Income Tax Act, cross objections can be filed by the respondents within 30 days of the receipt of the notice. In the instant case admittedly, the appeal has been preferred against a dead person. The finding of fact is recorded that the legal heirs of the deceased have received the memo of appeal after applying for certified copy on 13.6.2006. The cross

objections have been filed on 19.6.2006.

4. It is therefore, clear that the order of the Tribunal does not suffer from any error apparent on the face of the record. In the light of that, there is no merit in the petition. Petition accordingly dismissed.

(R.S.Mohite,J) **(F.I.Rebello,J)**